



STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following Agency of the State of Utah:

Dept. of Transportation	810	Proc./Region Three	referred to as STATE and the following:
Agency Name	Agency Code	Division	
CONTRACTOR	Surface Preparation Technologies		LEGAL STATUS OF CONTRACTOR
	Name		Sole Proprietor
	81 Texaco Road		Non-Profit Corporation
	Address		<input checked="" type="checkbox"/> For-Profit Corporation
Mechanicsburg	PA	17050	Partnership
City	State	Zip Code	Government Agency
H Matt Johnson	(717)	697-1450	
Contact Person	Phone Number		
251584843	900084A	91327000000	
Federal ID#	Vendor Number	Commodity Code(s)	

2. CONTRACT TYPE AND PURPOSE:

This is a requirements contract to provide the State with construction of longitudinal rumble strips. A performance bond in the amount of \$29,250.00 is required.

3. PROCUREMENT: This contract is entered into as a result of the Procurement process on bid PM5107,
Requisition # 810 56000000174, FY 2006.
4. CONTRACT PERIOD: Effective date 01 - Sept. - 2005. Termination date 31 - Aug. - 2006, unless terminated early or extended in accordance with the terms of this contract. Renewal Options (if any) 1-one year.
5. CONTRACT COSTS: This is a requirements contract. See Attachment C for pricing.
6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions.
ATTACHMENT B: Scope of Work.
ATTACHMENT C: Itemized Price List.
ATTACHMENT D: ~~Itemized Price List~~ *Special Terms and Conditions*. *sw*
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

- A. All other governmental laws, regulations or actions applicable to the goods and/or services authorized by this Contract.
B. Utah State Procurement Code, Procurement Rules and Contractor's responses to Bid # PM5107 dated 03-Aug.-2005.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR
SEE ATTACHED

Contractor's Signature
H. MATT JOHNSON

Contractor's Name
PRESIDENT

Title

STATE OF UTAH

David K. Miles, Operations Engineer

Director, Division of Purchasing

CONTRACT RECEIVED AND
PROCESSED BY
DIVISION OF FINANCE

Director, Division of Finance

Debra Boulton

(801) 965-4070

(801) 965-4073

dboulton@utah.gov

Agency Contact Person

Phone Number

Fax Number

Email Address

REC'D NOV 07 2005

MAIL TO:

STATE OF UTAH
DIVISION OF PURCHASING
3150 STATE OFFICE BUILDING, CAPITOL HILL
P.O. BOX 141061
SALT LAKE CITY, UTAH 84114-1061
TELEPHONE (801) 538-3026
<http://purchasing.utah.gov>

Invitation to Bid



Solicitation Number: PM5107

Due Date: 05/25/05 at 2:00 PM

Date Sent: May 4, 2005

Agency Contract

Goods and services to be purchased:

CONSTRUCTION OF LONGITUDINAL RUMBLE STRIPS

Must Complete

Company Name <i>Surface Preparation Technologies, Inc.</i>		Federal Tax Identification Number <i>25-1584843</i>	
Ordering Address <i>81 Texaco Road</i>		City <i>Mechanicsburg</i>	State <i>PA</i>
Remittance Address (if different from ordering address)		City	Zip Code <i>17050</i>
Type <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person <i>H. Matt Johnson</i>		
Telephone Number (include area code) <i>717-697-1450</i>		Fax Number (include area code) <i>717-697-0813</i>	
Company's Internet Web Address <i>www.rumblestrips.com</i>		Email Address <i>matt@surfpreptech.com</i>	
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)		Days Required for Delivery After Receipt of Order (see attached for any required minimums)	
<p>The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, Terms and Conditions, and specifications. <u>Please review all documents carefully before completing.</u></p> <p>The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If no, enter where produced, etc. _____</p>			
Contractor License Number	Contractor License Expiration Date	Contractor Class Title	Contractor Class Number
<p>CONTRACTOR MUST BE A LICENSED CONTRACTOR IN THE STATE OF UTAH TO BID FOR THIS PROJECT. SEE WWW.PURCHASING.UTAH.GOV CURRENT BIDS CONTRACTOR CLASSIFICATION FOR CURRENT CLASSIFICATION CODES.</p>			
Offeror's Authorized Representative's Signature <i>H. Matt Johnson</i>		Date <i>5/11/05</i>	
Type or Print Name <i>H. Matt Johnson</i>		Position or Title <i>President</i>	

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NON APPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
16. **PUBLIC INFORMATION::** Contractor agrees that the contract will be a public document, and may be available for distribution. Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS::** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-1002, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Additional Terms and Conditions; 3. Contractor Terms and Conditions.

ATTACHMENT B: SCOPE OF WORK

LONGITUDINAL RUMBLE STRIP

PART 1 GENERAL INFORMATION

- A. Construction of longitudinal rumble strip on the shoulder or at the centerline of the roadway. The rumble strip will be installed on either HMAP (Hot Mix Asphalt Pavement) or PCCP (Portland Cement Concrete Pavement).
- B. The contract shall be on an as needed basis and no guarantee of quantities to be installed are written nor implied.
- C. The placement of the rumble strip may be on both interstate and non- interstate roadways. The location of these roadways is in the following counties: Utah, Juab, Wasatch, Duchesne, Uintah and Daggett counties.
- D. The contractor shall submit a Traffic Control plan for approval by the Region Traffic Engineer prior to beginning work. The traffic control plan shall be in conformance with the Manual of Uniform Traffic Control Devices (MUTCD) and the most current UDOT TC series standard drawings and specifications.
- E. The contractor shall furnish, place and maintain all traffic control devices and signs. Separate payment will not be made for the traffic control; the cost of the traffic control shall be included in the unit bid price for placement of the longitudinal rumble strip.
- F. In areas of high traffic volume the contractor shall be restricted from working in the direction of rush hour traffic during commute times. The Region Traffic Engineer and/or the Region Operations Engineer shall determine the restricted hours based on the route and location on which the work is being performed.
- G. At a minimum, the contractor shall be given five (5) working day's notice as to the location of the work and the time restrictions if any.
- H. The contractor will be guaranteed a minimum of to roadway miles (5 miles in each direction of travel) of rumble strip placement for each work order request.
- I. The mobilization item will be paid for each county in which the work is done and shall be applies to each work order seorately.

PART 2 EQUIPMENT - HMAP AND/OR PCCP

- A. Construct longitudinal rumble strip with equipment using a rotary type cutting head, capable of obtaining the required groove width and depth in a single pass while moving in the same direction as the flow of traffic.
 - 1. Use equipment with cutting head(s) having independent suspension from the power unit to allow the head to self align with the slope of the shoulder.
 - 2. Use cutting head(s) that provide a smooth surface (approximately 1/16 inch between peaks and valleys).

LONGITUDINAL RUMBLE STRIP - PAGE 2

- B. Provide equipment that is specifically designed to install/construct the longitudinal rumble strips in the particular type of pavement the strip is placed in, whether the pavement is HMAP or PCCP.
- C. Apply asphalt flush coat at a uniform rate of 0.10 gal/yd² diluted two parts concentrate to one part water by the manufacturer. This is to be applied only to the rumble strips placed in HMAP not to those placed in PCCP. The cost for the flush coat and the application of the same shall be included in the unit cost of longitudinal rumble strip.

PART 3 CONTROL OF WORK

AUTHORITY AND DUTIES OF THE UDOT

- A. The Region Operations Engineer or his designee shall decide all questions regarding quality and acceptability of work performed and interpretation of contract documents.
- B. The Region Operations Engineer or his designee has the authority to suspend the work without liability to the UDOT if the contractor fails to correct unsafe conditions that may cause harm to the public and/or project personnel. Additionally, the UDOT can suspend work wholly or partially for periods of unsuitable weather or for any other condition or reason determined to be in UDOT's best interest.
- C. The Region Operations Engineer is the final acceptance authority for the completed work.

CONTRACTOR COOPERATION AND RESPONSIBILITIES

- A. The contractor shall employ a competent superintendent experienced with the work being performed and is capable of reading and understanding the contract documents
- B. The superintendent must be present at the work site at all times work is being performed, must be available to execute instructions and directions from UDOT, must be authorized to act as the agent for the contractor in all matters regarding the work being performed.

PART 4 EXECUTION OF THE WORK

Placement/installation of longitudinal rumble strip

- A. Construct longitudinal rumble strip to the dimensions and spacing shown on the UDOT PV series Standard Drawings.
 - 1. Establish lane widths of 12 feet minimum prior to the installation of longitudinal rumble strip, unless otherwise direct by the Region Operations Engineer or his designee.
 - 2. Construct longitudinal rumble strip prior to the placement Chip Seal Coat, if required.
- B. Provide a positive means of controlling the alignment.
 - 1. The Region Operations Engineer or his designee may randomly verify alignment of the edge of the pattern.
- C. Construct a 500-foot long test section to demonstrate that the equipment, personnel and methods of operation are capable of producing acceptable results.
 - 1. Do not proceed with work until it is demonstrated that the required dimensions, alignment and smoothness can be achieved without tearing or otherwise damaging the pavement.
 - 2. Repair or replace pavement as determined by the Region Operations Engineer or his designee if the test section is determined to be unacceptable.
- D. Remove resulting debris prior opening the adjacent lane to traffic.
 - 1. Provide equipment with the ability to remove the debris from the roadway so that a hazard is not left for the travel public. The UDOT Region Three Operations Engineer or his designee shall do the acceptance of clean up.
 - 2. Dispose of the debris material in accordance with all Federal, State and Local regulations and in a manner acceptable to the Region Operations Engineer or his designee.

ATTACHMENT C: ITEMIZED PRICE LIST

Item #	Item Description	Units	Quantity	Unit Price
1	Mobilization	Each	20	****
2	Longitudinal Rumble Strip placed in HMA pavement in Utah County	Linear Foot	150,000	.30
3	Longitudinal Rumble Strip placed in HMA pavement in Juab County	Linear Foot	100,000	.30
4	Longitudinal Rumble strip placed in PCCP pavement in Juab County	Linear Foot	50,000	.50
5	Longitudinal Rumble Strip placed in HMA pavement in Wasatch County	Linear Foot	150,000	.30
6	Longitudinal Rumble Strip placed in PCCP pavement in Wasatch County	Linear Foot	25,000	.50
7	Longitudinal Rumble Strip placed in HMA pavement in Duchesne County	Linear Foot	50,000	.30
8	Longitudinal Rumble Strip placed in HMA pavement in Uintah County	Linear Foot	50,000	.30
9	Longitudinal Rumble Strip placed in HMA pavement in Daggett County	Linear Foot	25,000	.30

**** The mobilization item will be negotiated per work order not to exceed \$15,000.00 for any one work order.

The cost for traffic control at each work site shall be included in the cost of the items listed above, no separate payment will be made.

Clean up of grinding or milling debris by the means of a mechanical device is required. The cost for cleanup shall be included in the cost of the items listed above.

The State will measure and pay for each item as detailed in this section. Payment is contingent upon acceptance by the State.

ATTACHMENT D: SPECIAL TERMS AND CONDITIONS

1. **CONTRACT ACCEPTANCE:** At the time the bid is signed by the Offeror, the signature of that Offeror will be used as a legally binding signature if awarded this contract. When signed by the Division of Purchasing and a Utah Department of Transportation representative and assigned a contract number, this document will become a legally binding contract with the Offeror for the contract period specified.
2. **CONTRACT INCLUSION:** The bid document, its terms and conditions as well as any counter offers which are accepted/acceptable to the State, shall be incorporated into and by reference become a part of this contract as though set forth in full herein.
3. **QUANTITY OR AMOUNT ESTIMATES:** The State does not guarantee to purchase any amount under this contract. Estimated amounts are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.
4. **PRICING:** The Contractor agrees that the prices bid on materials/services in this contract shall be guaranteed for one year.

ANY CHANGE REQUEST ON PRICES MUST GUARANTEE THE PRICE FOR THE SAME LENGTH OF TIME AS INDICATED ABOVE AND MUST BE MADE AT LEAST THIRTY (30) DAYS PRIOR TO THE REQUESTED EFFECTIVE DATE. ANY SUCH REQUEST MUST INCLUDE SUFFICIENT DOCUMENTATION SUPPORTING THE REQUEST. REQUESTS FOR CHANGE ON ANY PRICING IN THIS CONTRACT SHALL NOT BE EFFECTIVE UNTIL IT IS APPROVED BY THE PROCUREMENT SUPERVISOR OR THE PROCUREMENT MANAGER OF THE UTAH DEPARTMENT OF TRANSPORTATION.

5. **WAGES:** The Contractor shall be responsible for all applicable company wages in accordance with the federal, state, and local laws and ordinances.
6. **INVOICING: THE CONTRACT NUMBER AND ORDER NUMBER MUST APPEAR ON ALL INVOICES, BILLS OF LADING, PACKAGES AND ALL CORRESPONDENCE RELATING TO EACH ORDER AND DELIVERY.**

The State reserves the right to adjust incorrect invoices. The Contractor shall submit invoices to the Attention Jason Davis, Utah Department of Transportation Region Three, 658 North 1500 West, Orem UT 84057. The State will remit payment by mail.

7. **NON-COMPETE CLAUSE:** The Contractor represents its officers and employees are free to contract with the State and are not subject to restrictions by the terms of their present employment including, but not limited to an agreement not to compete for a period of time unless disclosure has been made. A Contractor must disclose to the State any possible conflict, in writing, before the contract is signed and the State will evaluate whether to continue with contract execution. The State may elect to terminate a contract immediately with a Contractor who is subsequently determined to be subject to such restrictions without liability to the State. If the State elects to terminate a contract for this reason, the State will supersede paragraph #12 in Attachment A - Standard Terms and Conditions and will not provide 30 day prior notice to the Contractor.
8. **PERFORMANCE BOND:** At the time the contract is executed, the Contractor shall provide a performance bond amounting to fifteen percent (15%) of the bid amount guaranteeing performance and payment.



SURFACE PREPARATION TECHNOLOGIES, INC.

Phone: (717) 697-1450

FAX: (717) 697-0813

Corporate Office: 81 Texaco Rd., Mechanicsburg, PA 17050-2664
Midwest Branch: 1020 S. Wabash, Suite 7A, Chicago IL 60605
West Branch: 331 Gregg Dr., Buena Vista, CO 81211

October 11, 2005

Mr. Brian Phillips
Utah Dept. of Transportation
4501 South 2700 West
Salt Lake City, UT 84118

Re: Contract #06-9052

Dear Brian:

Attachment B, part 1, letter G reads as follows:

"At a minimum, the contractor shall be given five (5) working day's notice as to the location of the work and the time restrictions if any."

Possibly your contracts office decided not to modify your suggested change of 30 days since the words "At a minimum" precluded the statement with regard to notice. Since I do not believe that letter G sets forth any specific performance restriction I will go ahead and sign the contract as is so as not to delay the return of these contracts any longer. In addition I will strike the words "five (5)" and make it "thirty days (30)" with initials to convey our intentions with regard to advance notice.

Please let me know if you have any questions or problems with what I did and we are looking forward to working with you on this project.

Very truly yours,

H. Matt Johnson
President

License Numbers:

AK 26322
AL 26149
AR 0082420401
CA 762671
CO 1052-A
DE 251584843
ID 14464-A-4(47)
IL 251584843-00
MD 020371
MA S191-5
MI 08374
MN 74909
MS 12314
MT 2758
NE 20174
NV 47189
NJ S9358
NM 2051795
ND 27822
OH 2509
OR 604899-87
PA S-296
SC G100094
VT 99173
VA S487
WA 601548045
WV 17004

THE AMERICAN INSTITUTE OF ARCHITECTS
PERFORMANCE BOND

PRF 08204432

AIA Document A312

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
Surface Preparation Technologies, Inc.
81 Texaco Road
Mechanicsburg, PA 17050-0813

SURETY (Name and Principal Place of Business):
Fidelity and Deposit Company of Maryland
200 Berwyn Park
Suite 105
Berwyn, PA 19312-1187

OWNER (Name and Address):
State of Utah, Department of Transportation
4501 South 2700 West, Box 141510
Salt Lake City, Utah 84118-1500

CONSTRUCTION CONTRACT

Date: September 1, 2005

Amount: Twenty Nine Thousand Two Hundred Fifty and No/100-----(\$29,250.00)

Description (Name and Location): Contract No. 06-9052 - Requisition Number 810 56000000174;
Construction of Longitudinal Rumble Strips.

BOND

Date (Not earlier than Construction Contract Date): September 1, 2005

Amount: Twenty Nine Thousand Two Hundred Fifty and No/100-----(\$29,250.00)

Modifications to this Bond:

☒ None

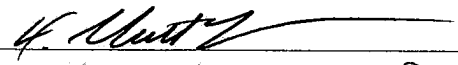
☐ See Page 3

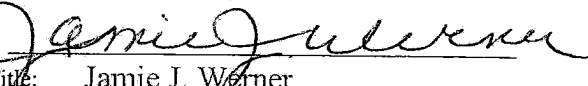
CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)
Surface Preparation Technologies, Inc.

SURETY

Company: (Corporate Seal)
Fidelity and Deposit Company of Maryland

Signature: 
Name and Title: H. Matt Johnson, President

Signature: 
Name and Title: Jamie J. Werner
Attorney-in-Fact

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY — Name, Address and Telephone)

AGENT or BROKER: Murray Risk Mgt & Ins.
4999 Louise Dr., Suite 201, Mechanicsburg, PA
17055 (717) 620-2474

OWNER'S REPRESENTATIVE (Architect, Engineer or
other party):

"This document has been reproduced electronically with the permission of The American Institute of Architects under license number 97020-1015 to Murray Insurance Associates, Inc., which expires April 1, 2006. Reproduction of this document after that date or without project specific information is not permitted."

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor's Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 2.1: and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
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4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design, professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-
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able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance to the Contractor

of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied or waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

THE AMERICAN INSTITUTE OF ARCHITECTS

PAYMENT BOND

AIA Document A312

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
Surface Preparation Technologies, Inc.
81 Texaco Road
Mechanicsburg, PA 17050-0813

SURETY (Name and Principal Place of Business):
Fidelity and Deposit Company of Maryland
200 Berwyn Park
Suite 105
Berwyn, PA 19312-1187

OWNER (Name and Address):
State of Utah, Department of Transportation
4501 South 2700 West, Box 141510
Salt Lake City, Utah 84118-1500

CONSTRUCTION CONTRACT

Date: September 1, 2005

Amount: Twenty Nine Thousand Two Hundred Fifty and No/100-----(\$29,250.00)

Description (Name and Location): Contract No. 06-9052 - Requisition Number 810 56000000174;
Construction of Longitudinal Rumble Strips.

BOND

Date (Not earlier than Construction Contract Date): September 1, 2005

Amount: Twenty Nine Thousand Two Hundred Fifty and No/100-----(\$29,250.00)


Modifications to this Bond:

☒ None

☐ See Page 6

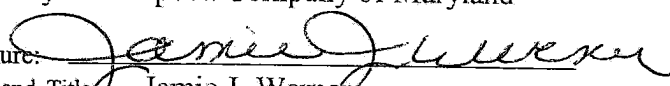
CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)
Surface Preparation Technologies, Inc.

Signature: 
Name and Title: H. Matt Johnson, President

SURETY

Company: (Corporate Seal)
Fidelity and Deposit Company of Maryland

Signature: 
Name and Title: Jamie J. Werner
Attorney-in-Fact

(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY — Name, Address and Telephone)

AGENT or BROKER: Murray Risk Mgt & Ins.
4999 Louise Dr., Suite 201, Mechanicsburg, PA
17055 (717) 620-2474

OWNER'S REPRESENTATIVE (Architect, Engineer or
other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

- .1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
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- .2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
- .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.3.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this wwwwwwwwwwwwwww

Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contact with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part or water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the
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used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

**Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

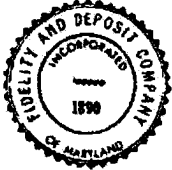
KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Kitty A. CASSELL, Brent D. HEADLEY, Timothy C. HOAGLAND, Heidi R. HOFFMAN and Jamie J. WERNER, all of Mechanicsburg, Pennsylvania, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents,** shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Kitty A. CASSELL, Brent D. HEADLEY, Timothy C. HOAGLAND, Heidi R. HOFFMAN, Jamie J. WERNER, dated February 10, 2003.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 16th day of September, A.D. 2005.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Eric D. Barnes

Eric D. Barnes

Assistant Secretary

By:

William J. Mills

William J. Mills

Vice President

State of Maryland } ss:
City of Baltimore }

On this 16th day of September, A.D. 2005, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came WILLIAM J. MILLS, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Maria D. Adamski

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2007